IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

MFA.No. 1374 of 2002()

OPMV.722/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONER

SHAKUNTHALA,AGED 34 YEARS,
W/O.SIVASANKARAN, CHAKKUMALLISSERY
HOUSE, KADAMBODE DESOM,
MATTATHUR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.V.M.KRISHNAKUMAR

RESPONDENTS: RESPONDENTS
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1. SHAJI,S/O.NEETINGARA VARGHESE,
AGED 33 YEARS, VELLIKULANGARA VILLAGE,
MONADY DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

2. K.A.VARGHESE, S/O.ABRAHAM,
KUNAMMATH HOUSE,VELLIKULANGARA,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

3. THE BRANCH MANAGER,
THE ORIENTAL INSURANCE CO.LTD.,
ANGAMALY.

BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27.9.2007 , THE COURT ON 27/09/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1374 OF 20O2

Dated this the 27th day of September, 2007

JUDGMENT

Koshy, J.

The appellant-claimant met with an accident due to the negligence of the first respondent driver, while she was travelling in a jeep. The vehicle was insured with the third respondent Insurance Company. She claimed Rs.1,50,000/- as compensation. The Tribunal found that there was valid insurance and the accident occurred due to the negligence of the first respondent. But only an amount of Rs.30,000/- was awarded as compensation. The only dispute is regrading the quantum of compensation. She claimed that she is a tailor by profession. She also produced a certificate to the effect that she has passed tailoring course conducted by the Government. According to her, her monthly income was Rs.1,500/-. That was accepted by the Tribunal. It is submitted that at the time of accident, she had a breast feeding child. The injury is fracture of pelvis. The Orthopedic Surgeon, who was examined as PW7, issued disability certificate, Exhibit A23 which reads as follows:

> "This is to certify that I have this day examined Mrs.Sakunthala 34 Yrs., W/o.Shivashankaran, Chakkammallissery, Kadambode for assessment of permanent disability arising out of an alleged Road Traffic Accident sustained on 01.12.1994.
>
> She was admitted at St.James Hospital, Chalakudy. She had sustained closed fracture of pelvis. She was managed conservatively by Pelvic traction and other supporting measures. (as per hospital records).
>
> Presently she has got complaints of Low Back Ache. She has got difficulty in sitting for long time. She is a Tailor by occupation. She is difficulty in walking long distances.
>
> On examination she is noted to have mild tenderness on palpation of the Pelvic Bone. She has got lumbar spendy losis and movements of the lumbar spine is restricted terminally.
>
> Based on above findings, in my opinion she has got a permanent partial disability of about 10% (ten percent only) according to Mo Bride's Guide line."

2. According to the doctor, 10% disability was certified. On going through the medical certificate, it is seen that there is no shortness of the legs because of the fracture of pelvis. It is stated that she has difficulty in walking long distance. She is a tailor. She has difficulty in sitting for a long time. Considering these difficulties, the Tribunal assessed 3% disability. We are of the opinion that since she has got lumbar spendy losis and movements of the lumbar spine is restricted terminally, compensation for atleast 5% disability ought

to have been granted. She was 28 years old. As per the second schedule to the Motor Vehicles Act, 18 should be taken as the multiplier and if Rs.1,500/- is calculated as her monthly income, taking 5% disability, the claimant is entitled to get Rs.16,200/-. The Tribunal has granted compensation of Rs.9,800/-. If that be so, additional compensation payable will be Rs.6,400/-. We are of the opinion that with regard to the compensation awarded in other heads, no enhancement is necessary. The additional compensation of Rs.6,400/- should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till the date of deposit over and above the decreed amount. On deposit of the above amount, the appellant will be entitled to withdraw the same. The appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1374 OF 2002

JUDGMENT

27.9.2007